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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

SAFECO INSURANCE COMPANY OF AMERICA.)	Civil Action No. CV-20-00024-
)	SPW-TJC
)	
Plaintiff,)	DEFENDANTS JOSHUA ADAM
)	DELAVAN AND KATE
v.)	DELAVAN'S BRIEF IN SUPPORT
)	OF MOTION TO STAY
MATTHEW GRIESHOP, JOSHUA)	PROCEEDINGS
ADAM DELAVAN, and KATE)	
DELAVAN,)	
)	
Defendants.)	
)	
_____)	

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I. INTRODUCTION.

Joshua Adam Delavan and Kate Delavan are third-party beneficiaries to insurance policies issued by Safeco Insurance Company of America to Matthew Grieshop. Safeco has moved for summary judgment on the issue of whether or not they have a duty to provide coverage for claims made by the Delavans against Matthew Grieshop in Cause No. DV-19-87, Montana Twenty-Second Judicial District Court, Carbon County, Montana (i.e., the “underlying state-court action”).

The underlying state-court action has not been adjudicated. The Delavans respectfully move this Court for an Order staying this instant case and all relevant proceedings until such as time as the underlying state-court action has been adjudicated and all the relevant facts have been determined.

II. ARGUMENT.

Questions regarding coverage require adjudication of the underling case in order to establish facts which may or may not trigger insurance coverage. *State Farm Mut. Auto. Ins. Co. v. Freyer*, 2013 MT 301, ¶ 26, 372 Mont. 191, 312 P.3d 403 (citations omitted). “Established facts” in this context pertains to facts which are either undisputed or are initially disputed but subsequently determined by the fact finder. *Id.*, at ¶ 27.

Courts have routinely held that declaratory actions on the “duty to indemnify” are premature when there are still unresolved issues in the underlying

action which may ultimately affect whether an insurer has a duty to indemnify. *Skinner v. Allstate Ins. Co.*, 2005 MT 323, ¶ 16, 329 Mont. 511, 127 P.3d 359 (citation omitted).

This honorable Court has recently entered a similar decision in *American Bankers Ins. Co. of Florida v. Cameron*, 2020 WL 5645848, 44 MFR 231 (D. Mont. Sept. 22, 2020). In *Cameron*, this Court noted that “generally, a claim for declaratory judgment regarding an insurer’s duty to indemnify is not ripe until there has been a resolution of the underlying claim.” This Court went on to state that “when a premature duty to indemnify claim is joined with a ripe duty to defend claim, courts have two options: (1) stay the indemnity issue, or (2) dismiss the indemnity claim without prejudice.” This Court noted that many courts, including District of Montana courts, favor staying the declaratory judgment proceedings.

In this coverage case, it is undisputed that the underlying claims between the Delavans and Matthew Grieshiop have not been adjudicated. As noted in prior briefing on Safeco’s summary judgment proceedings, “Grieshop disputes vigorously the allegations made by the Delavans in the Underlying Lawsuit.” Trial in the state court action will likely be required to establish the facts.

In response to Safeco’s motion for summary judgment on the issue of coverage, the Delavans have asked this Court to dismiss Safeco’s complaint on the

issue of coverage. However, the Delavans also recognize this Court's inclination to stay such proceedings pending resolution of the underlying case. Accordingly, the Delavans respectfully request that this Court stay the current case until such a time as there is a resolution by trial or otherwise in the underlying state-court action.

III. CONCLUSION.

For the reasons cited above, the Delavans, as third-party beneficiaries to the coverages provided by Safeco to Matthew Grieshop, respectfully request that this Court stay the instant case and all relevant proceedings until the underlying state-court action is adjudicated.

DATED this 21st day of October, 2020.

GANGLE LAW FIRM, PC.
*Attorneys for Defendants Joshua
Adam Delavan and Kate Delavan*

By: /s/Cory R. Gangle
Cory R. Gangle, Esq.

CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7(d)(2)(E), the undersigned counsel of record certifies that this Brief contains 540 words, excluding the caption, the Table of Contents, the Table of Authorities, this Certificate of Compliance, and the Certificate of Service.

DATED this 21st day of October, 2020.

GANGLE LAW FIRM, PC.

*Attorneys for Defendants Joshua
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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon the following individuals by the means designated below this 21st day of October, 2020:

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